IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13411 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALA HAWSINGH

Versus

AJAY KUMAR DESK OFFICER

Appearance:

MR PH PATHAK for the Petitioner.

MR MUKESH R SHAH for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 1

MR MG NAGARKAR for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/09/2001

ORAL JUDGEMENT

With the consent of the parties, the matter is finally heard today.

The petitioner has challenged the order passed by

the Government of India, Ministry of Law, dated 21st August, 2000, by which it was decided not to refer the dispute for adjudication on the ground that the workman had admitted during the enquiry that he was unauthorisedly absent from 18.2.1991 to 27.12.1991 and the charge was proved and the penalty of removal from service was imposed accordingly and hence, there is no need to refer the dispute for adjudication. It was argued by the petitioner that at the time of deciding the question about reference, the Government was not required to examine the case on merits, as it is for the appropriate Court to consider whether any relief can be granted to the concerned workman or not. It was submitted by the petitioner, therefore, that the order in question on the face of it is wrong. Mr.Pathak has also relied upon the decision of the Apex Court in Telco Convoy Drivers Mazdoor Sangh and another v. State of Bihar and others, (1989) 3 SCC 271, which has also clarified the position. In my view, therefore, this is not a case in which the Government should have declined to make a Reference to the appropriate Court. Whether on merits any relief can be granted to the concerned workman or not is a question which is required to be decided by the concerned Court, to whom the Dispute is required to be referred, and the Reference could not have been declined by the Government of India.

Mr.Shah, learned Advocate for the Central Government, however, submitted that there was no existing dispute since the petitioner had waited for three years before resorting to the remedy under the law. However, the Reference is declined only on the ground that the workman has admitted during enquiry about the misconduct. Now, on that ground, the Authority could not have rejected the prayer of the workman to refer the matter to the appropriate Court. Since Reference was not rejected on any other ground, the matter is sent back to the Government for taking fresh decision for making reference to the appropriate court. It is clarified that the Government may not decline to make reference only on the aforesaid ground of so-called admission on the part of the petitioner about his misconduct. Appropriate decision again be taken in accordance with law and ultimately, in the facts and circumstances of the case, appropriate decision may be taken for the purpose of making reference to the appropriate court. Since the matter is delayed for a long time, such a decision may be taken within a period of two months from the date of receipt of the writ from this Court.

Petition is accordingly allowed to the aforesaid

extent. Rule is made absolute accordingly, with no order as to costs.

Writ to be sent forthwith.

13th September, 2001 (P.B. Majmudar, J.)

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(apj)